

# RIGHT TO KNOW ADVISORY COMMITTEE

## DRAFT AGENDA

December 8, 2011

1:00 p.m.

Room 438, State House, Augusta

### Convene

1. Welcome and Introductions
2. Reports from Subcommittees; Advisory Committee action on Subcommittee recommendations as necessary
  - Bulk Records Subcommittee and Legislative Subcommittee  
*Mike Cianchette and Judy Meyer*
    - Criminal History Record Information Act revision, and Intelligence and Investigative Information
    - LD 1465
    - Future use of technology
    - Working papers public records exceptions
    - Treatment of requests for bulk transfers of public records
    - Additional recommendations
  - Public Records Exceptions Subcommittee  
*Shenna Bellows*
    - (54) 22 MRSA §8754 - sentinel events
    - (66) 24 MRSA §2510 (and §2505) - professional competence reports
    - (67) 24 MRSA §2510-A - professional competence review records
    - (57) 23 MRSA §63 - MaineDOT and MTA records
    - (18) & (19) 22 MRSA §§1696-D and 1696-F - Community Right-to-know
    - (62) 23 MRSA §8115 - Northern New England Passenger Rail Authority (NNEPRA)
3. Review Advisory Committee recommendations
4. Draft Report
5. Other?

### Adjourn

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John Pelletier, Chair  
Criminal Law Advisory Commission

Re: Criminal History Record Information Act

Dear Mr. Pelletier:

On behalf of the Right to Know Advisory Committee, thank you for the Criminal Law Advisory Commission's work in revising the Criminal History Record Information Act. The Advisory Committee was scheduled to review the confidentiality provisions and report its recommendations to the 124<sup>th</sup> Legislature, but we delayed our review and recommendations to give CLAC the time necessary to undertake the comprehensive review and revisions of the criminal law and procedure provisions that CLAC had identified as necessary. Our focus, as you know, is whether the confidentiality provisions in the statute are appropriate and as narrowly tailored as possible. We are also always supportive of efforts to make the statutes as clear and as understandable to the public as possible. We applaud you in your work to clarify and explain the criminal history records laws. We believe it is very helpful to separate the language governing intelligence and investigative information from the statutes that govern actual criminal history records.

The Advisory Committee's Legislative Subcommittee, chaired by Commission member Judy Meyer, reviewed the latest version of the proposed language in two separate public work sessions and questioned Special Assistant Attorney General Charles Leadbetter at length about the language, the intent and the changes incorporated into the draft. Mr. Leadbetter's knowledge is impressive and his assistance was invaluable in our review. Our understanding is that the public records exceptions have not changed significantly overall: what is confidential under the existing law will generally be confidential under the revision. We are aware that some of the clarifications may be interpreted as narrowing particular public records exceptions, and that the revision addresses a few substantive issues that are new to CHRIA. Major differences that users will notice are that the terminology used in the revision and the realigned structure make it abundantly clear what is public and what is not. We believe these are important improvements in Maine laws.

The Legislative Subcommittee unanimously recommended that the full Advisory Committee express its approval of the revision, which repeals the existing subchapter and

creates two new subchapters in Title 16. The Advisory Committee voted on December 8, 2011 to approve the revision, with the understanding that CLAC will finalize the revision before submitting it as legislation for introduction in the Second Regular Session of the 125<sup>th</sup> Legislature. We expect that the Judiciary Committee will have an opportunity to conduct the evaluation directed by Title 1, section 434, giving the Legislature the ability to carry out its own review of the public records exceptions. We will be happy to provide comments and advice to the Judiciary Committee.

Thank you for the opportunity to review CLAC's revision. Please do not hesitate to contact the Advisory Committee or its staff if you have any questions.

Sincerely,

Senator David R. Hastings III  
Chair

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**STATE OF MAINE  
125<sup>TH</sup> LEGISLATURE  
SECOND REGULAR SESSION**

**Sixth Annual Report  
of the  
RIGHT TO KNOW ADVISORY COMMITTEE**

**January 2012**

**Members:**

**Sen. David R. Hastings III  
Rep. Joan M. Nass  
Perry Antone Sr.  
Shenna Bellows  
Percy Brown Jr.  
Michael Cianchette  
Richard Flewelling  
James Glessner  
A. J. Higgins  
Mal Leary  
William Logan  
Judy Meyer  
Kelly Morgan  
Linda Pistner  
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<http://www.maine.gov/legis/opla/righttoknow.htm>**

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  - 1. *(still to come)*

## EXECUTIVE SUMMARY

This is the sixth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. The 16 members are appointed by the Governor, the Chief Justice, the Attorney General, the President of the Senate and the Speaker of the House of Representatives. More information is available on the Advisory Committee's website: <http://www.maine.gov/legis/opla/righttoknow.htm>. The Office of Policy and Legal Analysis provides staffing to the Advisory Committee while the Legislature is not in session.

By law, the Advisory Committee must meet at least four times per year. During 2011, the Advisory Committee met four times: July 15, September 29, November 17 and December 8. To assist in completion of its work, the Advisory Committee appointed three subcommittees: Legislative, Public Records Exceptions and Bulk Records. All three subcommittees held meetings and made recommendations to the Advisory Committee.

The Advisory Committee was very fortunate to have the services of a Legal Extern of the Maine School of Law. Diane DeJesus, currently a second year student at the Law School, worked with the Advisory Committee during the first semester of the 2011-2012 school year.

As in previous annual reports, this report includes a brief summary of the legislative actions taken in response to the Advisory Committee's January 2011 recommendations and a summary of relevant Maine court decisions from 2011 on the freedom of access laws.

For its sixth annual report, the Advisory Committee makes the following recommendations:

***[Add recommendations made in Section VI of report]***

In 2012, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for the public records exceptions in Titles 22 through 25 (*Add in any issues that the Advisory Committee tables?*) The Advisory Committee looks forward to a full year of activities and working with the Governor, the Legislature and the Chief Justice of the Maine Supreme Judicial Court to implement the recommendations contained in its sixth annual report.

## I. INTRODUCTION

This is the sixth annual report of the Right to Know Advisory Committee. The Right to Know Advisory Committee was created by Public Law 2005, chapter 631 as a permanent advisory council with oversight authority and responsibility for a broad range of activities associated with the purposes and principles underlying Maine's freedom of access laws. Title 1, section 411 is included as Appendix A. Previous annual reports of the Advisory Committee can be found on the Advisory Committee's webpage at [www.maine.gov/legis/opla/righttoknowreports.htm](http://www.maine.gov/legis/opla/righttoknowreports.htm).

The Right to Know Advisory Committee has 16 members. The chair of the Advisory Committee is elected annually by the members. The Advisory Committee members are:

Sen. David R. Hastings III Chair	<i>Senate member of Judiciary Committee, appointed by the President of the Senate</i>
Rep. Joan M. Nass	<i>House member of Judiciary Committee, appointed by the Speaker of the House</i>
Perry Antone Sr.	<i>Representing law enforcement interests, appointed by the President of the Senate</i>
Shenna Bellows	<i>Representing the public, appointed by the President of the Senate</i>
Percy Brown Jr.	<i>Representing county or regional interests, appointed by the President of the Senate</i>
Michael Cianchette	<i>Representing State Government interests, appointed by the Governor</i>
Richard Flewelling	<i>Representing municipal interests, appointed by the Governor</i>
James T. Glessner	<i>Member of the Judicial Branch</i>
A.J. Higgins	<i>Representing broadcasting interests, appointed by the President of the Senate</i>
Mal Leary	<i>Representing a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House</i>
William Logan	<i>Representing the public, appointed by the Speaker of the House</i>

Judy Meyer	<i>Representing newspaper publishers, appointed by the Speaker of the House</i>
Kelly Morgan	<i>Representing newspapers and other press interests, appointed by the President of the Senate</i>
Linda Pistner	<i>Attorney General's designee</i>
Harry Pringle	<i>Representing school interests, appointed by the Governor</i>
Mike Violette	<i>Representing broadcasting interests, appointed by the Speaker of the House</i>

The complete membership list of the Advisory Committee, including contact information, is included as Appendix B.

By law, the Advisory Committee must meet at least four times per year. During 2011, the Advisory Committee met four times: July 15, September 29, November 17 and December 8. Subcommittee meetings were held on September 1, 12, and 29; October 6, 7, 14 and 21; and November 10 and 17; and December 8. All of the meetings were held in the Judiciary Committee Room of the State House in Augusta and open to the public. Each meeting was also accessible through the audio link on the Legislature's webpage. The Advisory Committee has also established a webpage which can be found at [www.maine.gov/legis/opla/righttoknow.htm](http://www.maine.gov/legis/opla/righttoknow.htm). Agendas, meeting materials and summaries of the meetings are included on the webpage.

## **II. RIGHT TO KNOW ADVISORY COMMITTEE DUTIES**

The Right to Know Advisory Committee was created to serve as a resource and advisor about Maine's freedom of access laws. The Advisory Committee's specific duties include:

- ❑ Providing guidance in ensuring access to public records and public proceedings;
- ❑ Serving as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know;
- ❑ Supporting the provision of information about public access to records and proceedings via the Internet;
- ❑ Serving as a resource to support training and education about Maine's freedom of access laws;
- ❑ Reporting annually to the Governor, the Legislative Council, the Joint Standing Committee on Judiciary and the Chief Justice of the Supreme Judicial Court about the

state of Maine's freedom of access laws and the public's access to public proceedings and records;

- ❑ Participating in the review and evaluation of public records exceptions, both existing and those proposed in new legislation;
- ❑ Examining inconsistencies in statutory language and proposing clarifying standard language; and
- ❑ Reviewing the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public.

In carrying out these duties, the Advisory Committee may conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records.

The Advisory Committee may make recommendations for changes in statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws.

### **III. RECENT COURT DECISIONS RELATED TO FREEDOM OF ACCESS ISSUES**

By law, the Advisory Committee serves as the central source and coordinator of information about Maine's freedom of access laws and the people's right to know. In carrying out this duty, the Advisory Committee believes it is useful to include in its annual reports a digest of the developments in case law relating to Maine's freedom of access laws. During 2011, the Advisory Committee identified 2 court decisions summarized below.

#### **2011 Maine Supreme Judicial Court Decision**

- ◆ **Anastos v. Town of Brunswick**, 2001 ME 41. The Supreme Judicial Court upheld the application of a public records exception to a feasibility study submitted as part of a joint development project in which the developer was seeking town approval of a tax increment financing agreement. The Court ruled in favor of the Town of Brunswick that refused to release the study submitted by the developer, finding that the entire report was protected by the public records exception shielding proprietary information submitted in the course of economic development projects. The Law Court reviewed de novo the public records exception in Title 5, section 13119-A, stating that it was aware of the need to "balance transparency of government action with the protection of sensitive information." The Superior Court had conducted an *in camera* review of the feasibility study and found that the entire work product was protected from public disclosure because it contained not only specific information but also an analysis of the information that would be advantageous to the developer's competitors and would disadvantage the developer if released. The Law Court

agreed and stated that a document that contains a “commercially advantageous collection or analysis of information” may be found to be confidential as a whole; neither release nor redaction is appropriate in such situations.

The Law Court reviewed the legislative history of the public records exception protecting proprietary information submitted for economic development assistance and found that the statute constitutes a “legislative balancing of equities and a clear intent to stimulate economic development.” The Court identified the feasibility study as the type of document contemplated by the Legislature in creating the public records exception. The protection from public disclosure was provided to encourage applicants to seek public economic development assistance; releasing this particular study even in redacted form would frustrate the clearly stated legislative intent.

## **2001 Maine Superior Court Decision**

- ◆ **MacImage of Maine, LLC v. Androscoggin County, et al.**, (Me. Super. Ct., Cumb. Cty., Feb. 20, 2011) (Warren, J.). The Cumberland County Superior Court ruled in February 2011 in favor of MacImage of Maine, LLC and its general manager John Simpson, who had brought suit against six counties in 2010 seeking access to the computer database of records maintained by each county’s registry of deeds. MacImage’s plan to build a single website on which the land records of all counties are available for review and copying is dependent on MacImage’s ability to obtain the records of the registries of deeds both initially and on a regular basis for updates. MacImage requested the electronic bulk transfer of the records from each county, which the counties had not been willing or able to do at the price MacImage was willing to pay. The case against the counties was pending at the close of 2010.

The Superior Court determined that the Legislature’s amendment to Title 33, section 751 made clear that the Title 33 statute, and not the fees provisions of the Freedom of Access laws, applies to the establishment of copying fees for the records of the registry of deeds in each county. The Court found that §751 does not, however, authorize the counties to charge fees based on the overall cost of maintaining their data in electronic form. The Court then reviewed each county’s fees for the bulk transfer of records to MacImage, and found that each county’s fees were not reasonable and constituted constructive denial of MacImage’s public records requests. The Court ordered each county to provide a download of the requested records using county-specific cost formulas.

The appropriate balance for future requests, determined based on the factors in the amended statute, is to allocate some portion of a county’s overall database costs in setting a copying fee. The court said that cost of storage media, mailing costs and contractor and personnel costs actually incurred in the translation and copying process can be charged to the requester. “Amortized infrastructure costs” can be figured into counties’ per image charge for electronic copies only to the extent that the infrastructure in question relates to the cost of producing and making copies.



All six counties appealed the decision to the Maine Supreme Judicial Court. Five entities filed amicus briefs. Oral arguments are scheduled before the Law Court on Tuesday, December 13, 2011.

#### **IV. RIGHT TO KNOW ADVISORY COMMITTEE SUBCOMMITTEES**

Given the broad scope of the Advisory Committee's ongoing duties and responsibilities and the nature of the requests received from the Legislature, the Advisory Committee reorganized its subcommittee structure in 2010. Three subcommittees were appointed: 1) Legislative; 2) Public Records Exceptions; and 3) Bulk Records. Senator Hastings and Representative Nass, the legislative members of the Advisory Committee, are ex officio members of each subcommittee.

***Legislative Subcommittee.*** The Legislative Subcommittee's focus is to serve as an advisor to the Legislature when legislation affecting public access is proposed and to respond to requests from the Legislature or others to consider issues affecting public records and public access. Judy Meyer serves as chair of the subcommittee and the following serve as members: Shenna Bellows, Michael Cianchette, Richard Flewelling, Ted Glessner, Mal Leary, William Logan, Kelly Morgan, Linda Pistner and Harry Pringle.

During 2011, the Legislative Subcommittee had six meetings; three of the meetings were joint meetings with the Bulk Records Subcommittee. The subcommittee was charged with several specific tasks.

##### *Review of the draft revision of the Criminal History Record Information Act proposed by the Criminal Law Advisory Commission*

The subcommittee received two presentations of a proposed re-draft of the Criminal History Record Information Act from Special Assistant Attorney General Charlie Leadbetter, a representative of the Criminal Law Advisory Commission. The Criminal History Record Information Act implicates public and confidential records. The subcommittee reviewed the draft revision, concentrating on the specific confidentiality provisions. The draft is broken into two pieces, the first focused on criminal history record information and the second creating a separate subchapter on intelligence and investigative information, a category of information that is not the same as criminal history. The Subcommittee agreed that the new language is much clearer with regard to what information is public and what information is confidential. The Subcommittee agreed to recommend that the full Advisory Committee approve the draft and that the Criminal Law Advisory Committee proceed with submitting the revision as proposed legislation.

##### *Inquiry about whether a freedom of access request should specifically cite the law from Chris Parr, Staff Attorney for the Maine State Police, Department of Public Safety*

The subcommittee discussed a request from Chris Parr, Staff Attorney in the Maine State Police, Department of Public Safety, asking the subcommittee to consider the question of what a FOA request is and whether a formal request that cites the FOA laws is necessary. The subcommittee agreed that formality is not and should not be required for a request, particularly for the general

member of the public making a request. The subcommittee did note that formality may become more necessary if changes to the law like the timelines proposed in LD 1465 are adopted.

Review of LD 1465, An Act to Amend the Laws Governing Freedom of Access

The Judiciary Committee carried over to the Second Regular Session LD 1465, An Act to Amend the Laws Governing Freedom of Access, and asked the Advisory Committee to review the bill and provide recommendations to the Judiciary Committee in January. The subcommittee received an overview presentation from the Maine Heritage Policy Center on LD 1465. The Maine Heritage Policy Center worked with Sen. Rosen and other stakeholders in drafting the bill and was the leading proponent of the bill before the Legislature. The subcommittee discussed each provision included in LD 1465 and developed recommendations for the Advisory Committee.

Public notice. The subcommittee opposed the change included in LD 1465 to require public notice to be given of public proceedings not less than 3 days prior to the public proceeding except in an emergency. The subcommittee agreed that the minimum of three days could easily become the standard practice of maximum notice, thus resulting in less notice of proceedings than is available now.

Form of request. In conjunction with the Bulk Records Subcommittee, the subcommittee agreed that a copy of a record should always be available in the form the record is kept, even in electronic form. The subcommittees developed proposed statutory language (different than proposed in LD 1465) to require an agency or official to provide access to an electronically stored record in the available medium of the requester's choice, unless the agency or official does not have the ability to separate or prevent the disclosure of any confidential information contained in a computer file.

The members also agreed to support clarification that requests can be by any means, including over the phone, and the copies can be provided by mailing, which could be more convenient for requestors and responders alike.

Fees and cost of access. Although LD 1465 does not propose any statutory changes related to fees, the subcommittee agreed by a vote of 5-4 to recommend an increase in the hourly fee for searching for, retrieving and compiling a public records request from \$10 per hour to \$15 per hour after the first hour of staff time per request.

Timelines. The subcommittee does not support the timelines included in LD 1465 as drafted. Members expressed a concern that it would be hard to develop a fixed timeline that would apply to all bodies and that it would be difficult for public bodies and officials to meet the timelines proposed in LD 1465; the current law's reasonable time standard is recognition by the Legislature that a single fixed-date approach may not fit everyone. The members recognized that current law allows a balancing test to consider the scope of the request and the staff time needed to respond, but also requires that agencies acknowledge the request within a reasonable time. Members stated that the "reasonable" standard in current law is a legal term of art that courts can

interpret on a case by case basis. While all of the subcommittee noted that the proposed timelines in LD 1465 are not likely to pass as drafted, some subcommittee members expressed support for a deadline because the “reasonable” standard in current law doesn’t give requestors or agencies a structure in which to work. Other members believed that a deadline will become the date that responses will be made, even if they could have been provided earlier. All agreed that they do not want to eliminate the opportunity for a citizen to walk up to the counter and ask for a public record; formalizing the process is not necessary. Establishing deadlines may require the use of a form for requests in order to track compliance with the deadlines.

As an alternative to a fixed timeline, the subcommittee (and the Bulk Records Subcommittee) agreed to require that a responding agency or official provide an estimate of when a copy of a requested record would be available, rather than setting hard deadlines. The estimate would have to be made in good faith and would be nonbinding.

Subcommittee members also support an effective Ombudsman as a resource to ensure timely compliance.

Remedies for violations of FOA laws. The subcommittee opposed the change proposed in LD 1465 to authorize the Superior Court to issue an injunction to enforce violations of the law. The subcommittee agreed that the court’s inherent powers include the power to issue an injunction and that no statutory change is necessary.

Public Access Officer. The subcommittee supported a requirement that each State agency, county and municipality appoint an existing employee to serve as the contact person for public records request. The subcommittee also supports a requirement that public access officers complete the same training in the Freedom of Access laws as elected officials. The subcommittee did not believe the detailed listing of responsibilities included in LD 1465 was necessary for public access officers to be effective.

Ombudsman position funding. The subcommittee supported funding the Ombudsman within the Attorney General’s Office as a full-time Assistant Attorney General position. As drafted, LD 1465 proposed funding for a part-time position.

*Expansion of “working papers exception” to Governor*

The subcommittee discussed the concerns raised by the Governor in a letter to the Advisory Committee about the use of the Freedom of Access laws for political purposes and to increase the workload of the Governor’s Office, particularly during the legislative session. At the request of the Governor’s deputy counsel and subcommittee member, Michael Cianchette, the subcommittee considered a draft proposal to create an exception from the definition of “public record”, modeled on the existing exception for the Legislature, for working papers and other documents used or maintained by the Governor or the Governor’s Office to prepare proposed legislation or reports during the Legislative session in which the proposed legislation or reports are prepared. The rationale for the exception is to allow policies to be developed freely and to

protect the mental processes of the Governor and his staff before decisions are made. All the records would become public, of course, upon distribution or the end of the legislative session.

The subcommittee recognized that the policy issue raised by the proposal brings focus to the inequity in the current law between the Legislative branch and the Executive branch of State government; the subcommittee's policy options are to broaden the exception to include the Governor and other public bodies or to repeal the Legislature's exception. Several members expressed support for the proposal based on the current inequity that protects the working papers and drafts prepared for and by the Legislature and Judiciary, but not the Executive. Other subcommittee members expressed concern about whether the existing exception for the Legislature was appropriate. The members expressed reservations about putting language like this into the law as it is useful for the public to know the government's thinking as policies and documents are developed.

The Subcommittee voted 5-4 in favor of expanding the exception, pending review of draft language. Because the subcommittee is significantly divided on the issue, members proposed that such a proposal, if it goes forward, should not be made part of LD 1465, but should be a separate piece of legislation.

*Other issues (to be added after discussion on December 8<sup>th</sup>??)*

*See discussion of Advisory Committee's recommendations in Section VI.*

**Public Records Exceptions Subcommittee.** The Public Records Exception Subcommittee's focus is to participate in the review and evaluation of public records exceptions, both existing and those proposed in new legislation; to examine inconsistencies in statutory language and to propose clarifying standard language. Shenna Bellows is the chair of the subcommittee and the following serve as members: Perry Antone, Percy Brown, AJ Higgins and Linda Pistner.

During 2011, the Public Records Exception Subcommittee held four meetings. The subcommittee completed review of 31 existing public records exceptions; these are the remaining exceptions of the more than 120 exceptions in Titles 22 to 25 that the subcommittee began reviewing in 2010. In its review, the subcommittee sought input from the State agencies responsible for administering the public records exceptions and a number of interested parties affected by specific exceptions, including the Department of Health and Human Services, Bureau of Insurance, Maine Turnpike Authority, Maine Department of Transportation, Board of Licensure in Medicine, Attorney General's Office, Maine Health Data Organization, Northern New England Passenger Rail Authority, the Maine Hospital Association, Maine Trial Lawyers' Association and Maine Medical Mutual Insurance Company.

The subcommittee recommended that some statutes be amended and also recommended communicating with the appropriate legislative policy committees about confidentiality provisions in programs that have never been implemented.

*See discussion of Advisory Committee's recommendations in Section VI.*

**Bulk Records Subcommittee.** The Bulk Records Subcommittee's focus is to continue the Advisory Committee's consideration of how the freedom of access laws apply to bulk records requests. Michael Cianchette is the chair of the subcommittee and the following serve as members: Perry Antone, Percy Brown, Richard Flewelling, Mal Leary and Judy Meyer.

During 2011, the Bulk Records Subcommittee held 6 meetings; three of the meetings were joint meetings with the Legislative Subcommittee.

The subcommittee discussed the scope of its charge and agreed that issues related to bulk data go beyond records maintained by county registry of deeds and that bulk data requests impact a wide range of records and electronic databases maintained by government agencies. The subcommittee reviewed other states' laws that define bulk data and determined that other state laws do not provide any guidance for a clear statutory definition or approach to bulk data. The subcommittee decided to gather public input and suggestions for how to address bulk data issues.

The subcommittee held a public hearing on Friday, October 14<sup>th</sup> to get input from state and local government agencies and interested parties on four questions:

1. What is bulk data and how should it be defined?
2. What is the appropriate method of determining the cost that a requestor must pay for bulk data?
3. Should a requestor of bulk data be entitled to the records in the format and type of access requested? Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?
4. Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?

*What is bulk data and how should it be defined?*

The Subcommittee determined that there was no way to work through bulk records as an issue separate from and outside the Freedom of Access laws. The Subcommittee agreed that defining "bulk records" was problematic; they concluded that they did not need to define the term if bulk records requests could generally be treated like any other public records request. The Subcommittee reached consensus in finding that deeds are public records, and would otherwise fall under the FOA laws generally.

*What is the appropriate method of determining the cost that a requestor must pay for bulk data?*

The subcommittee discussed whether there should be a separate way to establish fees for bulk records requests. The subcommittee's discussion about fees was thorough; several options were considered, including specific authorization for agencies to conduct rulemaking before setting

fees, setting fees in statute and maintaining the current freedom of access laws' requirement that fees must be reasonable. The subcommittee tried to separate deeds from the rest of the issues, especially since there is a separate statute that addresses issues specifically related to fees of the Registries of Deeds. The subcommittee also noted that the Secretary of State's Office has statutory authority to work with InforME to establish filing fees and other fees relating to electronic access to records held by the Secretary of State.

A majority of the subcommittee concluded that fees for bulk records should not be handled separately from other public records. One member, Joe Brown, didn't agree with the rest of the Subcommittee and believed it would be appropriate to establish fees for bulk records requests differently based on whether the requestor will be using the information for commercial or noncommercial purposes. Mr. Brown noted that the State already draws distinctions between commercial and noncommercial purposes in other areas, such as registering motor vehicles and in shellfish licenses. Reflecting that same distinction in bulk records, especially with regard to deeds, would not be unreasonable.

*Should a requestor of bulk data be entitled to the records in the format and type of access requested? Should a distinction be made between a requester seeking access to records and a requester seeking ownership of records?*

In discussing how responses to record requests should be formatted (electronic, paper, etc.), the subcommittee found common ground with the Legislative Subcommittee and they approached this issue together. The subcommittees agreed that a copy of a record should always be available in the form the record is kept, even in electronic form. The subcommittees developed proposed statutory language to require an agency or official to provide access to an electronically stored record in the available medium of the requester's choice, unless the agency or official does not have the ability to separate or prevent the disclosure of any confidential information contained in a computer file.

As for whether a distinction exists between accessing a record and owning a record, the subcommittee agreed that the records are owned by the public. The distinction may be important if access or costs are dependent on whether the requester is seeking the public records for a commercial purpose.

*Should the law distinguish between bulk data requests of public records for commercial purposes versus requests for noncommercial purposes?*

A majority of the subcommittee members determined that the freedom of access laws should make no distinction based on whether a requester is seeking a record for a commercial purpose. The members expressed concern that making a distinction between commercial and noncommercial request would require agencies and officials to investigate the motivation and purpose of requests. The members did not believe that a process like this could be applied uniformly across the state in both small towns and large State agencies. Again, Mr. Brown did not agree with the subcommittee; he reiterated his opinion that there is a difference between the

use of public records or bulk data like deeds for commercial use versus personal use and that it is reasonable for the law to recognize that distinction.

*See discussion of Advisory Committee's recommendations in Section VI.*

## **V. ACTIONS RELATED TO RIGHT TO KNOW ADVISORY COMMITTEE RECOMMENDATIONS CONTAINED IN FIFTH ANNUAL REPORT**

The Right to Know Advisory Committee made several recommendations in its fifth annual report. The actions taken in 2011 as a result of those recommendations are summarized below.

<b>Recommendation:</b> Continue without modification, amend and repeal the specified existing public records exceptions in Titles 22 through 25	<b>Action:</b> The Judiciary Committee accepted the recommendations of the Advisory Committee with regard to specific public records exceptions as proposed in Part A of LD 1154, enacted as Public Law 2011, chapter 320.
<b>Recommendation:</b> Amend the freedom of access laws to clearly state that all forms of communications, including electronic mail, not be used to defeat the purposes of the freedom of access laws	<b>Action:</b> The Judiciary Committee accepted the recommended statutory language of the Advisory Committee as proposed in Part B of LD 1154, enacted as Public Law 2011, chapter 320.
<b>Recommendation:</b> Retain the existing penalty provisions of the freedom of access laws	<b>Action:</b> No legislative changes have been made to the penalty provisions.
<b>Recommendation:</b> Take no action concerning the application of the freedom of access laws to partisan caucuses	<b>Action:</b> No changes have been made in law or the Legislature's rules relating to partisan caucuses.
<b>Recommendation:</b> Include a simple but noticeable statement on all State webpages that all aspects of communications with	<b>Action:</b> No legislative changes have been made, although the issue was discussed at the Freedom of Access training for legislators in December 2010.

the State, including an individual's email address may be considered public records	
<b>Recommendation:</b> Retain the Central Voter Registry System's confidentiality provisions as enacted by Public Law 2009, chapter 564	<b>Action:</b> No legislative changes have been made to the Central Voter Registry System's confidentiality provisions.
<b>Recommendation:</b> Amend the freedom of access laws to clarify that Social Security Numbers are not public records	<b>Action:</b> The Judiciary Committee accepted the recommended statutory language of the Advisory Committee as proposed in Part E of LD 1154, enacted as Public Law 2011, chapter 320.
<b>Recommendation:</b> Enact legislation to require records of public proceedings	<b>Action:</b> The Judiciary Committee accepted the recommended statutory language of the Advisory Committee as proposed in Part C of LD 1154, enacted as Public Law 2011, chapter 320.
<b>Recommendation:</b> Enact legislation to expand the scope of the process of reviewing proposed public records exceptions to include access issues	<b>Action:</b> The Judiciary Committee accepted the recommended statutory language of the Advisory Committee as proposed in Part D of LD 1154, enacted as Public Law 2011, chapter 320.
<b>Recommendation:</b> Make improvements to the State's Freedom of Access Website <a href="http://www.maine.gov/foaa">www.maine.gov/foaa</a>	<b>Action:</b> The suggested improvements have been forwarded to the Governor's Office and Office of Information Technology for consideration.
<b>Recommendation:</b> Support establishment of a project to provide freedom of access services to the public	<b>Action:</b> The Advisory Committee's Law School Extern, Diana DeJesus, has developed a draft Citizen's Guide to Maine's Freedom of Access Laws for distribution and posting on the website. Opportunities for grant funding to support publication of the guide are being explored.

## VI. RECOMMENDATIONS



During 2011, the Advisory Committee engaged in the following activities and makes the recommendations summarized below.

**☐ Continue without modification, amend and repeal the following existing public records exceptions in Titles 22 through 25**

As required by law, the Advisory Committee reviewed the existing public records exceptions identified in Title 22 through Title 25. The Advisory Committee's recommendations are summarized below.

The Advisory Committee recommends that the following exceptions in Titles 22 through 25 be continued without modification.

- ◆ Title 22, section 1711-C, subsection 2, relating to hospital records concerning health care information pertaining to an individual
- ◆ Title 22, section 1828, relating to Medicaid and licensing of hospitals, nursing homes and other medical facilities and entities
- ◆ Title 22, section 2706, relating to prohibition on release of vital records in violation of section; recipient must have "direct and legitimate interest" or meet other criteria
- ◆ Title 22, section 2706-A, subsection 6, relating to adoption contact files
- ◆ Title 22, section 2769, subsection 4, relating to adoption contact preference form and medical history form
- ◆ Title 22, section 3022, subsections 8, 12 and 13, relating to medical examiner information
- ◆ Title 22, section 4008, subsection 1, relating to child protective records
- ◆ Title 22, section 8824, subsection 2, relating to the newborn hearing program
- ◆ Title 22, section 8943, relating to the registry for birth defects
- ◆ Title 23, section 1980, subsection 2-B, relating to recorded images used to enforce tolls on the Maine Turnpike
- ◆ Title 23, section 1982, relating to patrons of the Maine Turnpike
- ◆ Title 23, section 4251, subsection 10, relating to records in connection with public-private transportation project proposals of at least \$25,000,000 or imposing new tolls
- ◆ Title 24, section 2604, relating to liability claims reports under the Maine Health Security Act
- ◆ Title 24, section 2853, subsection 1-A, relating to action for professional negligence under the Maine Health Security Act
- ◆ Title 24, section 2857, subsections 1 and 2, relating to mandatory prelitigation screening and mediation panels
- ◆ Title 24, section 216, subsections 2 and 5, relating to records of the Bureau of Insurance

The Advisory Committee recommends, with one dissenting vote, that the following exceptions in Titles 22 through 25 be continued without modification.

- ◆ Title 22, section 1848, subsection 1, relating to documents and testimony given to the Attorney General under Hospital and Health Care Provider Cooperation Act

- ◆ Title 24-A, section 6807, subsection 7, relating to individual identification data of viators

The Advisory Committee recommended that the following public records exceptions be amended. See draft legislation in Appendix C.

- ◆ Title 22, section 3034, subsection 2, relating to the Chief Medical Examiner missing persons files

The Advisory Committee recommended a statutory change to the following public records exception in order to remove references to information submitted by health care providers to a now-defunct State agency. See draft legislation in Appendix C.

- ◆ Title 22, section 8707, relating to the Maine Health Data Organization

The Advisory Committee recommended a statutory change, not intended to effect a substantive change, to the following public records exceptions in order to make confidentiality language as consistent as possible throughout the statutes. See draft legislation in Appendix C.

- ◆ Title 24-A, section 2393, relating to workers' compensation pool self-insurance and surcharges

The Advisory Committee recommended that the following public records exception be repealed as the provision is no longer administered as a result of a United States Supreme Court ruling. The Advisory Committee also wrote to the Joint Standing Committee on Health and Human Services to inform of the recommendation from the Attorney General that the entire section be repealed. See letter in Appendix \_\_\_\_.

- ◆ Title 22, section 1555-D, subsection 1, relating to lists maintained by the Attorney General of known unlicensed tobacco retailers

The Advisory Committee recommended that the following statutory sections be reviewed by the relevant policy committees because the programs have not been implemented. See letters in Appendix \_\_\_\_.

- ◆ Title 22, section 3188, subsection 4, relating to the Maine Managed Care Insurance Plan Demonstration for uninsured individuals
- ◆ Title 22, section 3192, subsection 13, relating to Community Health Access Program medical data

*[Exceptions Still Under Review by Subcommittee and Advisory Committee---add to recommendation categories above as decisions are made]*

- ◆ Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret

- ◆ Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret
- ◆ Title 22, section 8754, relating to medical sentinel events and reporting
- ◆ Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority
- ◆ Title 23, section 8115, relating to the Northern New England Passenger Rail Authority
- ◆ Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act
- ◆ Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act
  
- ◆ **Support the revision of the Criminal History Record Information Act proposed by the Criminal Law Advisory Commission (as recommended by the Legislative Subcommittee)**
  
- ◆ **Make no distinction under the freedom of access laws for a request for bulk records with regard to the fees for access or the purpose for which the request is made (as recommended by the Bulk Records Subcommittee)**
  
- ◆ **Enact legislation to require an agency or official to provide an estimate of the time within which the agency or official will comply with a public records request (as recommended by the Legislative Subcommittee)**
  
- ◆ **Enact legislation to increase the hourly fee that may be charged for the actual cost of searching for, retrieving and compiling the requested public record from \$10 per hour to \$15 per hour request (as recommended by the Legislative Subcommittee-not unanimous)**
  
- ◆ **Enact legislation to clarify that an agency or official shall provide access to an electronically stored record in the available medium of the requester's choice, which is defined as a printed document of the public record or the medium in which the record is stored except that an agency or official is not required to provide access to a computer file if the agency or official has no ability to separate or prevent disclosure of any confidential information contained in the file (as recommended by the Bulk Records and Legislative Subcommittees)**
  
- ◆ **Enact legislation to clarify that the new use of information technology may not reduce access to public records and to require State agencies to consider certain factors related to access to public records and protection of confidential information when purchasing or contracting for computer software and other information technology resources (as recommended by the Bulk Records and Legislative Subcommittees)**
  
- ◆ **Enact legislation to require each State agency, county and municipality to designate an existing employee as public access officer and require public access officers to complete**

**the same training in the freedom of access laws as elected officials (as recommended by the Legislative Subcommittee)**

- ◆ **Support funding for a full-time Ombudsman position within the Department of Attorney General (as recommended by the Legislative Subcommittee)**
- ◆ **Enact legislation concerning the confidentiality of working papers of the Office of Governor and a governing bodies and public officials to mirror the existing confidentiality exception available for working papers of the Legislature (as recommended by the Legislative Subcommittee-not unanimous)**

*[Discussion of each recommendation and  
any additional recommendations to be added after final meeting]*

## **VII. FUTURE PLANS**

In 2012, the Right to Know Advisory Committee will continue to provide assistance to the Judiciary Committee relating to proposed legislation affecting public access and the recommendations of the Advisory Committee for existing public records exceptions in Titles 22 through 25. *(Add in any issues that the Advisory Committee tables?)* The Advisory Committee looks forward to a full year of activities and working with the Governor, the Legislature and the Chief Justice of the Maine Supreme Judicial Court to implement the recommendations contained in its sixth annual report.

**Reinsch, Margaret**

---

**From:** Kent Hartsfield <khartsfield@webqa.net>  
**Sent:** Wednesday, December 07, 2011 10:41 AM  
**To:** Reinsch, Margaret  
**Subject:** Re: Right To Know Advisory Committee  
**Attachments:** FOIA Datasheet.pdf; Screen Shot - Internal request.PNG; Screen Shot - Request input.PNG; Screen Shot - request views.PNG; Sample Report.pdf

Peggy,

I just looked through my old emails and realized I hadn't sent you some additional information about our service. We are currently working with over 120 local and state government clients nationwide to help streamline their RTK Process. Here are a few of the more popular features of our system:

- Online Portal - Customized area through your website for citizens to create electronic RTK requests
- Automated Routing - Automatically routes, notifies, escalates, and assigns requests to different personnel based on the request type
- Escalation rules (convenient for media requests or other high profile types of requests)
- Letter Creator and Manager (easily manage letter templates)
- Prior Request service - Quickly search prior requests for related issues and documents
- Archive - Incoming requests are automatically archived and viewable on your website
- Reporting - Over 30 standard reports and a custom report wizard
- Fee Payments - Creates invoices/letters straight from the system for any fees imposed

I am also attaching a short datasheet about the system, a couple screenshots of the internal managing system, and a sample report that you can create from the system. Some of this information might not make sense looking at static images, but it should give you sense that we have thought about every possible scenario when it comes to the RTK process.

If you or any members of the RTK Advisory Committee have any questions, please don't hesitate to give me a ring or reply.

Thanks again,  
Kent

On Fri, Dec 2, 2011 at 1:14 PM, Reinsch, Margaret <[Margaret.Reinsch@legislature.maine.gov](mailto:Margaret.Reinsch@legislature.maine.gov)> wrote:

Hi, Kent -

I just spoke with Senator Hastings. The agenda for next Thursday is pretty tight, especially with it being the last meeting of the year, and he does not want to try to add one more thing that isn't already on the Advisory Committee's docket for the year. We aren't even sure if the Right to Know Advisory Committee is the right audience for your presentation.

If you have any materials you can send me, however, I will be happy to share them with all the Advisory Committee members. Maybe they or their constituents would be in a position to use the services and would therefore like to hear more and schedule you for a presentation.

Thanks for staying on top of this.

Peggy

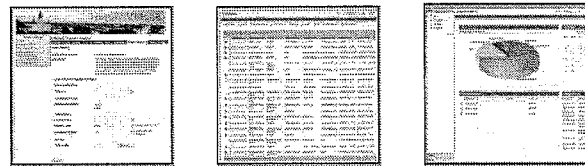




The Bridge To Your Community

## THE OPEN RECORDS SYSTEM FOR GOVERNMENT

## Transforming the Open Records Process from a Manual, Paper Process to an Automated One



### About the FOIA Request System

**GovQA** is WebQA's platform that leads the country in Citizen Request Management for city and county governments. **GovQA** unites a full-scale service tool for local governments with a dynamic knowledge-base capability. Today these technologies combine to help cities and counties ranging in population size from 1,000 citizens to over one million citizens.

The FOIA Request System captures all requests received by letter, web, email, fax, or walk-in. It handles all aspects of the request process by logging, routing, managing, calculating associated fees, generating letters and delivering the required documents. This also allows government groups the ability to meet and exceed all state FOIA compliance rules.

### Benefits

- Faster Response Times and more consistent handling of requests
- Automated Management eliminates the manual, paper and spreadsheet process
- Complete Insight on staff time, staff costs, response times, communications, and more.
- Reduces Requests with knowledgebase of information and documents
- Finally...

Complete. Easy. Affordable.

### Features

#### Fee Tracking

Track all fees, including waived fees

#### Time Tracking

Easily track all staff time devoted to one or all requests

#### Reporting

Over 30 standard reports and custom report writer

#### Prior Request Searching

Quickly search prior requests eliminating duplication

#### Appeals Processing

Manages all requests in appeals or AG opinion status

#### Custom Business Rules

Automatically routes, notifies, escalates, and assigns

#### Escalation Rules

Automatically escalates any response delays and notifies staff

#### Letter and Email Manager

Easily create and manage letters and email notifications

#### Payments

Creates estimate letters with online payment option for fees

#### Security

Highest level of security with User Profiles for staff

Kent Hartsfield

Senior Accounts Manager

khartsfield@webqa.net | Tel: 630.633.7305



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Answers

Requests

All AG Requests

All Open Activities Assigned to Me

All Open Requests

All Open Requests Assigned to Me

All Open Requests Assigned to My

All Requests

[Click to manage views](#)

**W000476-110311 - FOIA Request**

Details

FOIA Fees

FOIA Time

Activities (1)

Attachments (1)

Letters (0)

Customer

History

Save

New Message

Add

Print

Change Customer

Answers Viewed

Return

**FOIA Request Details**

\*Type of Information Requested:

Budget

\*Describe the document(s) you are requesting:

Budget info for Public Works Dept for 2010

\*How do you wish to review material or have copies?:

☐ Inspect

☒ Copies

\*What type copies do you prefer? (subject to availability):

☒ Print Copies

☐ Copies on CD

☐ Fax Copies

☐ Electronic by Email

**Internal Information Only:**

Media Request:

Publish Request:

Multi-Dept:

Stop the Clock:

**AG Opinion Information:**

Exemptions Claimed:

If applicable

**Search**

**Create**

**Recently Viewed**

Reference No

W000476-110311

Create Date

11/3/2011 11:12 AM

Update Date

11/3/2011 11:25 AM

Completed/Closed

No

\*Required Completion Date

11/17/2011

Status

Assigned

Priority

Medium

Assigned Dept

City Clerk

Assigned Staff

Mark Turner

Customer Name

Senior Account Manager Kent

Hartsfield

Email Address

khartsfield@webqa.net

Phone



Browse

Search

Create

Answers

Requests

Customers

Create a New Request

Select Customer

Create Request

Save

Save and Add Again

Save and Return

Return To Search

Cancel

### Request Details

\*Request Type:

FOIA Request

Source:

Walk-In

### Customer Details

Title:

First Name:

Last Name:

Customer Email:

Address 1:

Address 2:

City:

State:

Zip:

### FOIA Request Details

\*Type of Information Requested:

Please Select One

\*Describe the document(s) you are requesting:

Recently Viewed

## Browse

Answers

Requests

All AG Requests

All Open Activities Assigned to Me

All Open Requests

All Open Requests Assigned to Me

All Open Requests Assigned to My

All Requests

Items I am Following

Click to manage views

Search

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## All Open Requests

New Request Search Edit Letters Print

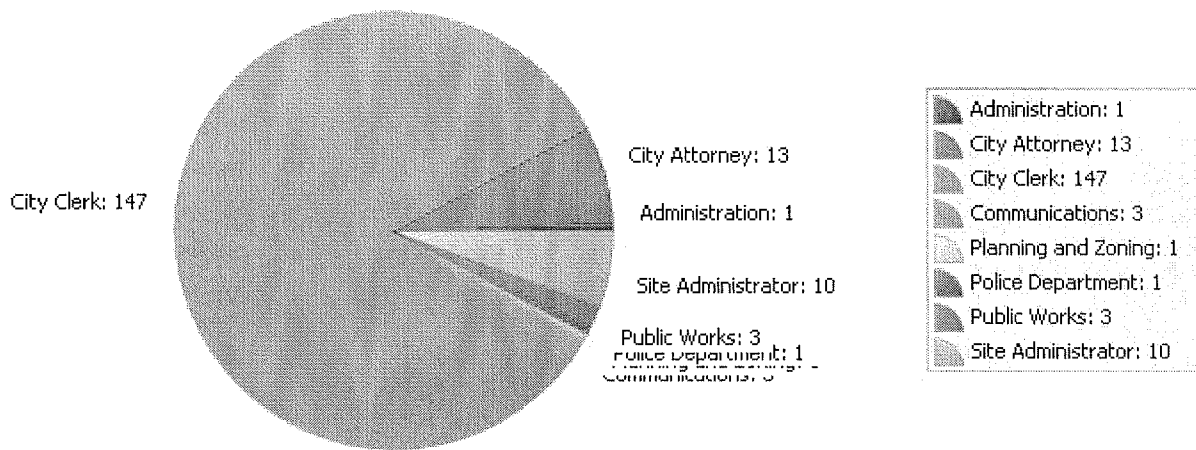
Displaying records 1 to 25 of 153

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<input type="checkbox"/>	<a href="#">W000469-111711</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/17/2011 10:39 AM	11/17/2011 10:25 AM
<input type="checkbox"/>	<a href="#">W000468-111711</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/17/2011 8:29 AM	11/17/2011 8:12 AM
<input type="checkbox"/>	<a href="#">W000467-111611</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/16/2011 1:56 PM	11/16/2011 1:46 PM
<input type="checkbox"/>	<a href="#">W000466-111611</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/16/2011 9:28 AM	11/16/2011 9:11 AM
<input type="checkbox"/>	<a href="#">W000465-111411</a>	FOIA Request	Assigned	City Clerk	Mark Turner	webqa2@webqa.net	11/14/2011 7:35 AM	11/14/2011 7:35 AM
<input type="checkbox"/>	<a href="#">W000464-111111</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/11/2011 11:29 AM	11/11/2011 11:13 AM
<input type="checkbox"/>	<a href="#">W000463-111011</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/10/2011 2:23 PM	11/10/2011 2:12 PM
<input type="checkbox"/>	<a href="#">W000462-111011</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/10/2011 8:35 AM	11/10/2011 8:22 AM
<input type="checkbox"/>	<a href="#">W000461-110911</a>	FOIA Police Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/9/2011 1:50 PM	11/9/2011 1:50 PM
<input type="checkbox"/>	<a href="#">W000460-110911</a>	Procurement	New	Site Administrator	Kent Hartsfield	khartsfield@webqa.net	11/9/2011 1:23 PM	11/9/2011 1:10 PM
<input type="checkbox"/>	<a href="#">W000459-110911</a>	Procurement	New	Site Administrator	Kent Hartsfield	khartsfield@webqa.net	11/9/2011 12:09 PM	11/9/2011 12:06 PM
<input type="checkbox"/>	<a href="#">W000476-110911</a>	Procurement	New	Site Administrator	Kent Hartsfield	khartsfield@webqa.net	11/9/2011 11:00 AM	11/9/2011 11:00 AM
<input type="checkbox"/>	<a href="#">W000477-110311</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/3/2011 3:20 PM	11/3/2011 3:11 PM
<input type="checkbox"/>	<a href="#">W000476-110311</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	11/3/2011 11:25 AM	11/3/2011 11:12 AM
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<input type="checkbox"/>	<a href="#">W000473-103111</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	10/31/2011 8:30 AM	10/31/2011 8:15 AM
<input type="checkbox"/>	<a href="#">W000472-102411</a>	FOIA Request	Assigned	City Clerk	Mark Turner	khartsfield@webqa.net	10/24/2011 1:02 PM	10/24/2011 12:49 PM
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<input type="checkbox"/>	<a href="#">W000469-101611</a>	FOIA Request	Assigned	City Clerk	Nikki Mocerino	khartsfield@webqa.net	10/18/2011 9:31 AM	10/18/2011 9:18 AM

# Activity

Run Date: 12/5/2011 8:43:01 AM

## Activity



Assigned Dept	Assigned Staff	Create Date	Close Date	Created By	Request Status	Request Type
Public Works	Mark Turner	1/6/2008		System Administrator	Send to Attorney	FOIA Request
Communications	Roger Edwards	3/27/2009	9/14/2010		Assigned	FOIA Request
City Clerk	Mike Walker	8/1/2010	6/1/2011		Full Release	FOIA Request
Communications	Dana Kirby	4/1/2010			Assigned	FOIA Request
Planning and Zoning	Mike Walker	4/3/2010	7/14/2009		Assigned	FOIA Request
Administration	Mark Turner	4/9/2009	7/14/2009		Clarification Requested	FOIA Request
City Clerk	Doug Shumway	5/27/2009	7/2/2009		Assigned	FOIA Request
City Clerk	Doug Shumway	5/28/2009	7/2/2009		Sent to AG for Opinion	FOIA Request
City Clerk	Doug Shumway	7/2/2009	7/14/2009		Ready for Review	FOIA Request
City Clerk	Doug Shumway	7/6/2010	7/14/2009		Assigned	FOIA Request
Communications	Dana Kirby	5/14/2010			Assigned	FOIA Request
City Clerk	Doug Shumway	5/20/2010			Sent to AG for Opinion	FOIA Request
Public Works	Mark Turner	7/12/2010			Assigned	FOIA Request
City Clerk	Doug Shumway	7/12/2010			Assigned	FOIA Request
City Clerk	Doug Shumway	10/13/2010			Assigned	FOIA Request
City Clerk	Doug Shumway	10/21/2010			Assigned	FOIA Request
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City Clerk	Doug Shumway	11/10/2010			Assigned	FOIA Request
City Clerk	Doug Shumway	1/11/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	1/14/2011			Assigned	FOIA Request

Assigned Dept	Assigned Staff	Create Date	Close Date	Created By	Request Status	Request Type
City Clerk	Doug Shumway	2/2/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	2/9/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	2/23/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	2/23/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	2/28/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	3/1/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	3/2/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	3/2/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	3/8/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	3/23/2011			Clarification Requested	FOIA Request
City Clerk	Doug Shumway	4/5/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	4/8/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	5/5/2011	5/5/2011		Full Release	FOIA Request
City Clerk	Doug Shumway	5/10/2011	5/10/2011		Full Release	FOIA Request
City Clerk	Doug Shumway	5/10/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	5/10/2011		sales sales	Assigned	FOIA Request
Public Works	Mark Turner	5/10/2011		sales sales	Assigned	FOIA Request
City Clerk	Doug Shumway	5/10/2011		sales sales	Assigned	FOIA Request
City Clerk	Doug Shumway	5/11/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	5/16/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	5/16/2011		sales sales	Assigned	FOIA Request
City Clerk	Doug Shumway	5/17/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	5/17/2011		sales sales	Assigned	FOIA Request
City Clerk	Doug Shumway	5/19/2011			Assigned	FOIA Request
City Attorney	Doug Shumway	5/19/2011		sales sales	Sent to AG for Opinion	FOIA Request
City Attorney	Mark Turner	5/19/2011		sales sales	Sent to AG for Opinion	FOIA Request
City Attorney	Charles Ford	5/19/2011		sales sales	Sent to AG for Opinion	FOIA Request
Police Department	Frank Williams	5/19/2011		sales sales	Assigned	FOIA Request
City Attorney	Doug Shumway	5/19/2011			Sent to AG for Opinion	FOIA Request
City Attorney	Doug Shumway	5/19/2011		sales sales	Sent to AG for Opinion	FOIA Request
City Clerk	Doug Shumway	5/23/2011			Assigned	FOIA Request
City Attorney		5/23/2011		sales sales	Sent to AG for Opinion	FOIA Request
City Attorney	Doug Shumway	5/24/2011			Sent to AG for Opinion	FOIA Request
City Attorney	Amy West	5/24/2011		sales sales	Assigned	FOIA Request
City Clerk	Doug Shumway	5/25/2011			Assigned	FOIA Request
City Attorney	Betty Rose	5/25/2011		sales sales	Sent to AG for Opinion	FOIA Request

Assigned Dept	Assigned Staff	Create Date	Close Date	Created By	Request Status	Request Type
City Attorney	Doug Shumway	5/26/2011			Sent to AG for Opinion	FOIA Request
City Attorney	Doug Shumway	5/26/2011			Sent to AG for Opinion	FOIA Request
City Attorney	Dana Kirby	5/26/2011		sales sales	Sent to AG for Opinion	FOIA Request
City Attorney		6/1/2011			Appeal - Initiated	FOIA Request
City Clerk	Doug Shumway	6/1/2011	7/14/2011		Full Release	FOIA Request
City Clerk	Doug Shumway	6/1/2011	7/14/2011	sales sales	Full Release	FOIA Request
City Clerk	Doug Shumway	6/2/2011	7/14/2011		Full Release	FOIA Request
City Clerk	Doug Shumway	6/2/2011	7/14/2011	sales sales	Full Release	FOIA Request
City Clerk	Doug Shumway	6/7/2011	7/14/2011		Full Release	FOIA Request
City Clerk	Doug Shumway	6/7/2011	7/14/2011		Full Release	FOIA Request
City Clerk	Doug Shumway	6/7/2011		sales sales	Assigned	FOIA Request
City Clerk	Doug Shumway	6/7/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	6/7/2011		sales sales	Assigned	FOIA Request
City Clerk	Doug Shumway	7/14/2011			Assigned	FOIA Request
Site Administrator	sales sales	7/25/2011			Clarification Requested	FOIA Request
City Clerk	Doug Shumway	7/26/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	7/26/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	7/28/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	7/28/2011			Assigned	FOIA Request
Site Administrator	sales sales	7/28/2011			Clarification Requested	FOIA Request
City Clerk	Doug Shumway	7/28/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	7/28/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	7/28/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	7/28/2011			Assigned	FOIA Request
Site Administrator	sales sales	7/29/2011			Clarification Requested	FOIA Request
Site Administrator	sales sales	8/2/2011			Clarification Requested	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Clarification Requested	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Clarification Requested	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request

Assigned Dept	Assigned Staff	Create Date	Close Date	Created By	Request Status	Request Type
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/3/2011			Assigned	FOIA Request
City Clerk	Doug Shumway	8/4/2011			Clarification Requested	FOIA Request
Site Administrator	sales sales	8/4/2011			Clarification Requested	FOIA Request
Site Administrator	sales sales	8/4/2011			Clarification Requested	FOIA Request

**Public Records Exceptions Subcommittee**

Proposed draft language changes

**Exception #66**

**Professional competence reports**

**Sec. 1. 24 MRSA §2505** is amended to read:

**§2505. Committee and other reports**

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

Except for specific protocols developed by a board pursuant to Title 32, section 1073, 2596-A or 3298, a physician, dentist or committee is not responsible for reporting misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs discovered by the physician, dentist or committee as a result of participation or membership in a professional review committee or with respect to any information acquired concerning misuse of alcohol or drugs or professional incompetence or malpractice as a result of physical or mental infirmity or by the misuse of alcohol or drugs, as long as that information is reported to the professional review committee. Nothing in this section may prohibit an impaired physician or dentist from seeking alternative forms of treatment.

The confidentiality of reports made to a board under this section is governed by this chapter.

**Sec. 2. 24 MRSA § 2510, sub-§1** is amended to read:

**§2510. Confidentiality of information**

**1. Confidentiality; exceptions.** Any reports, information or records received and maintained by the board pursuant to this chapter, including any material received or developed by the board during an investigation shall be confidential, except for information and data that is developed or maintained by the board from reports or records

**Public Records Exceptions Subcommittee**  
Proposed draft language changes

received and maintained pursuant to this chapter or by the board during an investigation and that does not identify or permit identification of any patient or physician; provided that the board may disclose any confidential information only:

- A. In a disciplinary hearing before the board or in any subsequent trial or appeal of a board action or order relating to such disciplinary hearing;
- B. To governmental licensing or disciplinary authorities of any jurisdiction or to any health care providers or health care entities located within or outside this State that are concerned with granting, limiting or denying a physician's privileges, but only if the board includes along with the transfer an indication as to whether or not the information has been substantiated by the board;
- C. As required by section 2509, subsection 5;
- D. Pursuant to an order of a court of competent jurisdiction; ~~or~~
- E. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted; or
- F. To other state or federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

**2. Confidentiality of orders in disciplinary proceedings.** Orders of the board relating to disciplinary action against a physician, including orders or other actions of the board referring or scheduling matters for hearing, shall not be confidential.

**2-A. Confidentiality of letters of guidance or concern.** Letters of guidance or concern issued by the board pursuant to Title 10, section 8003, subsection 5, paragraph E, are not confidential.

**3. Availability of confidential information.** In no event may confidential information received, maintained or developed by the board, or disclosed by the board to others, pursuant to this chapter, or information, data, incident reports or recommendations gathered or made by or on behalf of a health care provider pursuant to this chapter, be available for discovery, court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision or failure to provide health care services. This confidential information includes reports to and information gathered by a professional review committee.



**Public Records Exceptions Subcommittee**

Proposed draft language changes

**4. Penalty.** Any person who unlawfully discloses such confidential information possessed by the board shall be guilty of a Class E crime.

**5. Physician-patient privilege; proceedings by board.** The physician-patient privilege shall, as a matter of law, be deemed to have been waived by the patient and shall not prevail in any investigation or proceeding by the board acting within the scope of its authority, provided that the disclosure of any information pursuant to this subsection shall not be deemed a waiver of such privilege in any other proceeding.

**6. Disciplinary action.** Disciplinary action by the Board of Licensure in Medicine shall be in accordance with Title 32, chapter 48; disciplinary action by the Board of Osteopathic Licensure shall be in accordance with Title 32, chapter 36.

**SUMMARY**

This amendment makes 2 changes with regard to the treatment of confidential information held by a medical licensing board.

Title 24, section 2505 allows professional competence committees, physicians and any other person to report a physician to the appropriate licensing board. This amendment clarifies that the confidentiality provisions of the Maine Health Security Act, of which section 2505 is a part, govern the confidentiality of all such reports.

Title 24, section 2510 is amended to authorize medical licensing boards to share confidential information with state and federal agencies when the information contains evidence of possible violations of laws enforced by those agencies.

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**Public Records Exceptions Subcommittee**  
Proposed letter to ENR and HHS Committees

**Exceptions 18 and 19**

Sen. Thomas B. Saviello, Senate Chair  
Rep. James M. Hamper, House Chair  
Joint Standing Committee on Environment and Natural Resources  
100 State House Station  
Augusta, Maine 04333

Sen. Earle L. McCormick  
Rep. Meredith N. Strang Burgess  
Joint Standing Committee on Health and Human Services  
100 State House Station  
Augusta, Maine 04333

Dear Sen. Saviello, Sen. McCormick, Rep. Hamper and Rep. Strang Burgess:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee is reviewing existing public records exceptions in the statutes, and is focusing on the exceptions found in Titles 22 through 25. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for either keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review, the Subcommittee considered two exceptions in Title 22 within the "Community Right-to-Know Act" to address public concerns about hazardous substances. We understand that the program within the Department of Health and Human Services has never been implemented.

The Subcommittee worked on draft language to revise the confidentiality provisions to bring the language into conformity with the standard confidentiality wording and to make clear what information collected by the Department under the program would be considered public. Ultimately, however, we are reluctant to make recommendations concerning a program that has not been implemented.

We believe that the Department of Environmental Protection may have programs that parallel or overlap the purposes of the Community-Right-to-Know Act, and we know that the Maine Emergency Management Agency and county emergency management authorities also collect information and develop emergency plans concerning hazardous substances. We hope that your committees will find the time to review the existing programs and determine whether life should be breathed into the Community Right-to-Know Act and amended appropriately, or deleted completely.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.



**Public Records Exceptions Subcommittee**  
Proposed draft language changes

**Exception # 57**

Sec. 1. 23 MRSA § 63 is repealed and the following enacted in its place:

**§63. Confidentiality of records held by Department of Transportation and Maine Turnpike Authority**

**1. Confidential records.** The following records in the possession of the Department of Transportation and the Maine Turnpike Authority are confidential and may not be disclosed except as provided in this section:

A. Records and correspondence relating to negotiations for and appraisals of property; and

B. Records and data relating to engineering estimates of costs on projects to be put out to bid.

**2. Engineering estimates.** Engineering estimates of total project costs are public after the execution of project contracts.

**3. Records relating to negotiations and appraisals.** The records and correspondence relating to negotiations for and appraisals of property are public beginning 9 months after the completion date of the project according to the record of the department or authority, except that records of claims that have been appealed to the Superior Court are public following the award of the court.

**Summary**

This amendment clarifies that engineering estimates are public after the execution of project contracts.



**Public Records Exceptions Subcommittee**  
Proposed draft language changes

**Exception # 62      NNEPRA**

**Sec. . 23 MRSA §8115** is amended to read:

**§8115. Obligations of authority**

All expenses incurred in carrying out this chapter must be paid solely from funds provided to or obtained by the authority pursuant to this chapter. Any notes, obligations or liabilities under this chapter may not be deemed to be a debt of the State or a pledge of the faith and credit of the State; but those notes, obligations and liabilities are payable exclusively from funds provided to or obtained by the authority pursuant to this chapter. Pecuniary liability of any kind may not be imposed upon the State or any locality, town or landowner in the State because of any act, agreement, contract, tort, malfeasance, misfeasance or nonfeasance by or on the part of the authority or its agents, servants or employees. ~~The records and correspondence relating to negotiations, trade secrets received by the authority, estimates of costs on projects to be put out to bid and any documents or records solicited or prepared in connection with employment applications are confidential. The authority is deemed to have a lawyer-client privilege.~~

**Sec. . 23 MRSA §8115-A** is enacted to read:

**§8115-A. Authority records**

**1. Confidential records.** The following records of the authority are confidential:

A. Records and correspondence relating to negotiations of agreements to which the authority is a party or in which the authority has a financial or other interest. Once entered into, an agreement is not confidential;

B. Trade secrets;

C. Estimates prepared by or at the direction of the authority of the costs of goods or services to be procured by or at the expense of the authority; and

D. Any documents or records solicited or prepared in connection with employment applications, except that applications, resumes and letters and notes of reference, other than those letters and notes of reference expressly submitted in confidence, pertaining to the applicant hired are public records after the applicant is hired, except that personal contact information is not a public record as provided in Title 1, section 402, subsection 3, paragraph O.

**Public Records Exceptions Subcommittee**  
Proposed draft language changes

**2. Lawyer-client privilege.** The authority may claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

**SUMMARY**

This amendment revises the confidentiality provisions that apply to the NNEPRA's records to clarify what records are not subject to public access.

This amendment provides that records and correspondence relating to negotiations of agreements are confidential, although the final agreements are not designated confidential by this language.

Trade secrets remain confidential.

This amendment clarifies that estimates of costs of goods or services to be procured by or at the expense of the authority are confidential *if the estimates are prepared by the authority or at the direction of the authority*. The estimates do not become public over time.

This amendment revises the employment application confidentiality to track that of State, county and municipal employee applicants. All documents relating to applicants are confidential except for records pertaining to the applicant who is hired, most of which become public. Personal contact information of public employees is not a public record.

This amendment clarifies the language concerning the lawyer-client privilege; it allows the authority to claim the lawyer-client privilege in the same manner and circumstances as a corporation is authorized to do so.

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1465

S.P. 456

In Senate, April 12, 2011

### An Act To Amend the Laws Governing Freedom of Access

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Reference to the Committee on Judiciary suggested and ordered printed.

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator ROSEN of Hancock.

Cosponsored by Senators: ALFOND of Cumberland, COLLINS of York, DIAMOND of Cumberland, FARNHAM of Penobscot, HILL of York, HOBBS of York, KATZ of Kennebec, LANGLEY of Hancock, MARTIN of Kennebec, MASON of Androscoggin, McCORMICK of Kennebec, PLOWMAN of Penobscot, RECTOR of Knox, SHERMAN of Aroostook, SNOWE-MELLO of Androscoggin, THIBODEAU of Waldo, WHITEMORE of Somerset, Representatives: BEAVERS of South Berwick, DUNPHY of Embden, EVES of North Berwick, GUERIN of Glenburn, HARVELL of Farmington, HAYES of Buckfield, HINCK of Portland, O'CONNOR of Berwick, OLSEN of Phippsburg, ROSEN of Bucksport, SIROCKI of Scarborough, STRANG BURGESS of Cumberland, TURNER of Burlington.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read:

3 1-B. Public access officer. "Public access officer" means the person fulfilling the  
4 duties as described in section 413.

5 Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is further amended to  
6 read:

7 **§406. Public notice**

8 Public notice ~~shall~~ must be given for all public proceedings as defined in section 402,  
9 if these proceedings are a meeting of a body or agency consisting of 3 or more persons.  
10 This notice ~~shall~~ must be given ~~in ample time to allow public attendance not less than 3~~  
11 days prior to the public proceeding and ~~shall~~ must be disseminated in a manner  
12 reasonably calculated to notify the general public in the jurisdiction served by the body or  
13 agency concerned. In the event of an emergency meeting, local representatives of the  
14 media ~~shall~~ must be notified of the meeting, whenever practical, the notification to  
15 include time and location, by the same or faster means used to notify the members of the  
16 agency conducting the public proceeding.

17 Sec. 3. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is further amended to  
18 read:

19 **§408. Public records available for public inspection and copying**

20 **1. Right to inspect and copy.** Except as otherwise provided by statute, every person  
21 has the right to inspect and copy any public record during the regular business hours of  
22 the agency or official having custody of the public record within ~~a reasonable period of~~  
23 ~~time after making a request to inspect or copy the public record~~ the time limits  
24 established in section 408-A. An agency or official may request clarification concerning  
25 which public record or public records are being requested, but in any case the agency or  
26 official shall acknowledge receipt of the request within a reasonable period of time. A  
27 person may request by telephone that a copy of the public record be mailed or e-mailed to  
28 that person.

29 **2. Inspection, translation and copying scheduled.** Inspection, translation and  
30 copying may be scheduled to occur at such time as will not delay or inconvenience the  
31 regular activities of the agency or official having custody of the public record sought, as  
32 long as the inspection, translation and copying occur within the time limits established in  
33 section 408-A. The agency or official may use a 3rd party to make a copy of an original  
34 public record, but a requester may not remove the original of a public record from the  
35 agency or official.

36 **2-A. Form.** If a public record exists in electronic or magnetic form, the requester  
37 may request a copy of the public record in a paper, electronic, magnetic or other medium,  
38 specify the storage medium and request that the copy be provided by an electronic  
39 transfer by the Internet or other means.

1 A. An agency or official shall provide a copy of the public record in the requested  
2 medium if:

3 (1) The agency or official has the technological ability to produce the public  
4 record in that medium or can obtain the assistance necessary to produce the  
5 public record at a reasonable cost; and

6 (2) The requester agrees to pay the agency's or official's costs to purchase and  
7 install any additional necessary computer software or hardware to accommodate  
8 the request and to copy the public record in a requested medium.

9 B. If an agency or official cannot provide a copy of a public record in a requested  
10 medium, the agency or official shall identify every medium in which the public  
11 record can be provided for inspection and copying, which must include a paper copy,  
12 and the requester must identify the medium that is acceptable to the requester.

13 **3. Payment of costs.** Except as otherwise specifically provided by law or court  
14 order, an agency or official having custody of a public record may charge fees as follows.

15 A. The agency or official may charge a reasonable fee to cover the cost of copying.

16 B. The agency or official may charge a fee to cover the actual cost of searching for,  
17 retrieving and compiling the requested public record of not more than \$10 per hour  
18 after the first hour of staff time per request. Compiling the public record includes  
19 reviewing and redacting confidential information.

20 C. If translation is necessary, the agency or official may charge a fee to cover the  
21 actual cost of translation.

22 D. An agency or official may not charge for inspection.

23 E. If the requester requests that the public record be mailed, the agency or official  
24 may charge a fee not greater than the actual cost of mailing the record.

25 **4. Estimate.** The agency or official shall provide to the requester an estimate of the  
26 time necessary to complete the request and of the total cost. If the estimate of the total  
27 cost is greater than \$20, the agency or official shall inform the requester before  
28 proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies and  
29 the estimate must be provided within 3 business days of the request.

30 **5. Payment in advance.** The agency or official may require a requester to pay all or  
31 a portion of the estimated costs to complete the request prior to the translation, search,  
32 retrieval, compiling and copying of the public record if:

33 A. The estimated total cost exceeds \$100; or

34 B. The requester has previously failed to pay a properly assessed fee under this  
35 chapter in a timely manner.

36 **6. Waivers.** The agency or official may waive part or all of the total fee if:

37 A. The requester is indigent; or

38 B. Release of the public record requested is in the public interest because doing so  
39 is likely to contribute significantly to public understanding of the operations or

activities of government and is not primarily in the commercial interest of the requester.

Sec. 4. 1 MRSA §408-A is enacted to read:

§408-A. Timelines

1. Availability; redaction; location; collection. A public record must be made available immediately upon request unless time is required to redact the record so as to allow inspection and copying of only those portions of the record containing information that is a public record or to locate and collect a record that is not in active use or that is in storage.

2. Certification. If a public record is not available immediately, a public access officer shall promptly certify that fact in writing to the requester, provide an explanation for the delay and either provide an opportunity to inspect or copy the public record within 5 business days or mail or e-mail the public record within 5 business days.

3. Large or multiple requests. If a large public record is requested or multiple public records are requested and the public access officer or a person acting on behalf of the agency or official cannot in the exercise of due diligence produce the entire record or multiple records within 5 business days after the request, the public access officer shall provide the portion of the public record or public records when available. The requester may waive this requirement and request to see the public record or public records requested as a whole when available.

4. Estimate. If the cost to comply with a request to inspect or copy a public record is greater than \$100, an estimate must be provided within 3 business days of the request.

5. Failure to comply. Failure to comply with this section may be treated as a denial of a request and is subject to the enforcement provisions of this chapter.

Sec. 5. 1 MRSA §408-B is enacted to read:

§408-B. Inspection by requester

1. Ten business days. A requester shall complete an inspection of a public record within 10 business days after the record is made available for inspection. If the inspection is not completed within the 10-business-day period, a public access officer or a person acting on behalf of the agency or official shall inform the requester that a written request for additional time may be filed with the agency or official that has custody of the public record.

2. Additional periods. An agency or official shall allow an additional 20 business days beyond the period in subsection 1 for a requester to review a public record if the requester filed a written request for additional time with the agency or official or its public access officer or a person acting on behalf of the agency or official. If the inspection is not completed upon the expiration of the additional 20 business days, the public access officer or person acting on behalf of the agency or official shall inform the

1 requester that a 2nd written request for an additional 10 days may be filed with the  
2 agency or official that has custody of the public record.

3 **3. Interruption of inspection.** The time allowed for inspection of a public record  
4 may be interrupted if the agency or official needs to use the public record. If an agency or  
5 official invokes this subsection, the public access officer, no later than 5 business days  
6 after the agency or official takes the record back, shall inform the requester in writing the  
7 dates that the public record will be available for the inspection to resume. The time  
8 allowed for an inspection is tolled during the period in which the public record is being  
9 used by the agency or official.

10 **Sec. 6. 1 MRSA §410**, as repealed and replaced by PL 1987, c. 477, §6, is  
11 amended to read:

12 **§410. Violations; injunction**

13 For every willful violation of this subchapter, the state government agency or local  
14 government entity whose officer or employee committed the violation ~~shall be~~ is liable  
15 for a civil violation for which a ~~forfeiture~~ fine of not more than \$500 may be adjudged.

16 The Superior Court may issue an injunction to enforce the provisions of this chapter  
17 against any agency or official. A motion for an injunction is privileged in respect to its  
18 assignment for hearing and trial over all other actions except writs of habeas corpus and  
19 actions brought by the State against individuals.

20 **Sec. 7. 1 MRSA §412**, as amended by PL 2007, c. 576, §2, is further amended to  
21 read:

22 **§412. Public records and proceedings training for certain elected officials and**  
23 **public access officers**

24 **1. Training required.** ~~Beginning July 1, 2008, an~~ An elected official and a public  
25 access officer, subject to this section shall complete a course of training on the  
26 requirements of this chapter relating to public records and proceedings. The official or  
27 officer shall complete the training not later than the 120th day after the date the elected  
28 official takes the oath of office to assume the person's duties as an elected official or the  
29 person is designated as a public access officer pursuant to section 413, subsection 1. ~~For~~  
30 ~~elected officials subject to this section serving in office on July 1, 2008, the training~~  
31 ~~required by this section must be completed by November 1, 2008.~~

32 **2. Training course; minimum requirements.** The training course under subsection  
33 1 must be designed to be completed by an official or a public access officer in less than 2  
34 hours. At a minimum, the training must include instruction in:

35 A. The general legal requirements of this chapter regarding public records and public  
36 proceedings;

37 B. Procedures and requirements regarding complying with a request for a public  
38 record under this chapter; and

39 C. Penalties and other consequences for failure to comply with this chapter.

1 An elected official or public access officer meets the training requirements of this section  
2 by conducting a thorough review of all the information made available by the State on a  
3 publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding  
4 specific guidance on how a member of the public can use the law to be a better informed  
5 and active participant in open government. To meet the requirements of this subsection,  
6 any other training course must include all of this information and may include additional  
7 information.

8 **3. Certification of completion.** Upon completion of the training course required  
9 under subsection 1, the elected official or public access officer shall make a written or an  
10 electronic record attesting to the fact that the training has been completed. The record  
11 must identify the training completed and the date of completion. The elected official  
12 shall keep the record or file it with the public entity to which the official was elected. A  
13 public access officer shall file the record with the agency or official that designated the  
14 public access officer.

15 **4. Application.** This section applies to the following elected officials:

16 A. The Governor;

17 B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

18 C. Members of the Legislature elected after November 1, 2008;

19 E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers  
20 of probate and budget committee members of county governments;

21 F. Municipal officers, clerks, treasurers, assessors and budget committee members of  
22 municipal governments;

23 G. Officials of school units and school boards; and

24 H. Officials of a regional or other political subdivision who, as part of the duties of  
25 their offices, exercise executive or legislative powers. For the purposes of this  
26 paragraph, "regional or other political subdivision" means an administrative entity or  
27 instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a  
28 quasi-municipal corporation or special purpose district, including, but not limited to,  
29 a water district, sanitary district, hospital district, school district of any type, transit  
30 district as defined in Title 30-A, section 3501, subsection 1 or regional transportation  
31 corporation as defined in Title 30-A, section 3501, subsection 2.

32 This section also applies to a public access officer designated pursuant to section 413,  
33 subsection 1.

34 **Sec. 8. 1 MRSA §413 is enacted to read:**

35 **§413. Public access officer; responsibilities**

36 **1. Designation; responsibility.** Every agency or official shall designate to an  
37 existing staff member the responsibility of serving as a public access officer to oversee  
38 responses to requests for public records under this chapter. The public access officer  
39 shall oversee the prompt response to a request to inspect or copy a public record.

1        2. Training. A public access officer shall complete a course of training on the  
2        requirements of this chapter relating to public records and proceedings as described in  
3        section 412.

4        3. Purpose; schedule. A public access officer or other person acting on behalf of an  
5        agency or official may not inquire into the purpose of a request. A public access officer  
6        may inquire as to the schedule or order of inspection or copying of a public record or a  
7        portion of a public record under section 408.

8        4. Uniform treatment. A public access officer shall treat all requests for  
9        information under this chapter uniformly without regard to the requester's position or  
10       occupation, the person on whose behalf the request is made or the status of the requester  
11       as a member of the media.

12       5. Comfort and facility. The public access officer shall ensure that a person may  
13       inspect a public record in the offices of the agency or official in a manner that provides  
14       reasonable comfort and facility for the full exercise of the rights of the public under this  
15       chapter.

16       6. Unavailability of public access officer. The unavailability of a public access  
17       officer may not delay a response to a request.

18       **Sec. 9. Appropriations and allocations.** The following appropriations and  
19       allocations are made.

20       **ATTORNEY GENERAL, DEPARTMENT OF THE**

21       **Administration - Attorney General 0310**

22       Initiative: Provides funds for a part-time Assistant Attorney General position to act as the  
23       public access ombudsman and general operating expenses required to carry out the  
24       purposes of this Act.

25			
26	<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
27	POSITIONS - LEGISLATIVE COUNT	0.500	0.500
28	Personal Services	\$62,120	\$65,576
29	All Other	\$5,000	\$5,000
30			
31	GENERAL FUND TOTAL	<u>\$67,120</u>	<u>\$70,576</u>

32       **SUMMARY**

33       This bill increases governmental transparency by enhancing the existing freedom of  
34       access laws to provide deadlines for responses to requests for public records, to ensure  
35       that requesters can access public records in the format requested and to require the  
36       designation of public access officers for every agency and political subdivision.

1       The bill provides funding for an Assistant Attorney General position located in the  
2       Office of the Attorney General to act as the public access ombudsman, which is a  
3       part-time position.



**Bulk Records and Legislative Subcommittees**  
Possible draft language

**Sec. 1. 1 MRSA §400** is enacted to read:

**§400. Short title**

This subchapter may be known and cited as the "Freedom of Access Act."

*(Subchapter is currently §401 through §412)*

**Sec. 2. 1 MRSA §401-A** is enacted to read:

**§401-A. Public records; information technology policy**

**1. Policy.** The new use of information technology to collect, maintain, store and retrieve public records may not reduce access to public records.

**2. New information technology; considerations.** Each agency shall consider the following in the purchase of and contracting for computer software and other information technology resources:

A. Maximizing public access to public records; and

B. Maximizing the exportability of public data while protecting confidential information that may be part of otherwise public records.

**Sec. 3. 1 MRSA §402, sub-§1-B** is enacted to read:

**1-B. Public access officer.** "Public access officer" means the person designated pursuant to section 413, subsection 1.

**Sec. 4. 1 MRSA §402, sub-§3, ¶¶C-2 and C-3** are enacted to read:  
*Exceptions to "public records":*

*Current legislative working papers exception:*

*C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;*

**Bulk Records and Legislative Subcommittees**  
Possible draft language

C-2. Proposed legislation and reports until publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by the Governor or any employee of the Governor's office to prepare proposed legislation or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the proposed legislation or reports are prepared or considered or to which the proposed legislation or report is carried over;

C-3. Proposed legislation, reports, records, working papers, drafts, interoffice and intraoffice memoranda prepared for review, information or consideration by a (governing) body or duly-authorized official until: publicly distributed or otherwise provided to persons not in the service of the (governing) body or duly-authorized official; received by a quorum of the (governing) body; or the duly-authorized official makes a final decision to put forward the policy proposal reasonably related to the records or makes a final decision to abandon a policy proposal reasonably related to the records;

**Sec. 5. 1 MRSA §408 is repealed.**

**Sec. 6. 1 MRSA §408-A is enacted to read:**

**§408-A, Public records available for inspection and copying**

**1. Right to inspect and copy.** Except as otherwise provided by statute, every person has the right to inspect and copy any public record within a reasonable time of making the request to inspect or copy the public record.

**2. Clarification.** An agency or official may request clarification concerning which public record or public records are being requested.

**3. Acknowledgment; time estimate.** The agency or official shall acknowledge receipt of the request within a reasonable period of time, and shall provide a good faith, nonbinding estimate of the time within which the agency or official will comply with the request. The agency or official shall make a good faith effort to fully respond to the request within the estimated time.

**4. Refusals; denials.** If (a body or?) an agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, the (body or?) agency or official shall provide written notice of the denial,

**Bulk Records and Legislative Subcommittees**  
Possible draft language

stating the reason for the denial, within 5 working days of the request for inspection or copying by any person. [Currently part of §409, sub-§1, and currently uses the term "body" – what happens if we drop out?]

**5. Schedule.** Inspection, translation conversion and copying may be scheduled to occur at a time that will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought. As used in this section, "reasonable office hours" includes all regular office hours of an agency or official. If a the agency or official does not have regular office hours, the name and telephone number of a contact person authorized to provide access to the agency's or official's records must be posted in a conspicuous public place and at the office of the agency or official, if an office exists.

**6. Inspect.** A person may inspect any public record during reasonable office hours. An agency or official may not charge for inspection.

**7. Copy.** A person may copy a public record in the office of the agency or official having custody of the public record during reasonable office hours or may request that the agency or official having custody of the record provide a copy.

A. A request need not be made in person or in writing.

B. The agency or official shall mail the copy upon request.

**8. Compile or create.** An agency or official is not required to create or compile a record that does not exist.

**9. Electronically stored public records.** An agency or official shall provide access to an electronically stored public record in the available medium of the requester's choice. An available medium is a printed document of the public record or the medium in which the record is stored, except that a computer file is not an available medium if the agency or official does not have the ability to separate or prevent the disclosure of confidential information contained in that file.

A. An agency or official is not required to provide an electronically stored public record in a different medium, structure, format or organization, but may do so at the agency's or official's discretion.

B. If translation is necessary in order to provide for inspection or copying the agency or official converts the record into a form susceptible of visual or aural comprehension or into a usable format, the agency or official may charge a fee to cover the actual cost of translation conversion.

**Bulk Records and Legislative Subcommittees**  
Possible draft language

C. This subsection does not require an agency or official to provide a requester with access to a computer terminal.

**10. Payment of costs.** Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees for copies of public records as follows.

A. The agency or official may charge a reasonable fee to cover the cost of copying.

B. The agency or official may charge a fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 \$15 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.

C. An agency or official may not charge for inspection.

D. The agency or official may charge for the actual mailing costs to mail a copy of a record.

**11. Estimate.** The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 12 applies.

**12. Payment in advance.** The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation conversion, search, retrieval, compiling and copying of the public record if:

A. The estimated total cost exceeds \$100; or

B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.

**13. Waivers.** The agency or official may waive part or all of the total fee if:

A. The requester is indigent; or

B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

**Bulk Records and Legislative Subcommittees**  
Possible draft language

**Sec. 7. 1 MRSA §409** is amended to read:

**§409. Appeals**

**1. Records.** ~~If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by a refusal or denial to inspect or copy a record under section 408-A may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.~~

**Sec. 8. 1 MRSA §412**, as amended by PL 2007, c. 576, §2, is further amended to read:

**§412. Public records and proceedings training for certain elected officials and public access officers**

**1. Training required.** ~~Beginning July 1, 2008, an~~ An elected official and a public access officer, subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official or officer shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official or the person is designated as a public access officer pursuant to section 413, subsection 1. ~~For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.~~

**2. Training course; minimum requirements.** The training course under subsection 1 must be designed to be completed by an official or a public access officer in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with a request for a public record under this chapter; and
- C. Penalties and other consequences for failure to comply with this chapter.

**Bulk Records and Legislative Subcommittees**  
Possible draft language

An elected official or public access officer meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

**3. Certification of completion.** Upon completion of the training course required under subsection 1, the elected official or public access officer shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected. A public access officer shall file the record with the agency or official that designated the public access officer.

**4. Application.** This section applies to the following elected officials:

- A. The Governor;
- B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;
- C. Members of the Legislature elected after November 1, 2008;
- E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;
- F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;
- G. Officials of school units and school boards; and
- H. Officials of a regional or other political subdivision who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

This section also applies to a public access officer designated pursuant to section 413, subsection 1.

**Bulk Records and Legislative Subcommittees**  
Possible draft language

**Sec. 9. 1 MRSA §413** is enacted to read:

**§413. Public access officer; responsibilities**

**1. Designation; responsibility.** Each State agency, county and municipality shall designate an existing employee as its public access officer to serve as the contact person for that agency, county or municipality with regard to requests for public records under this chapter. *[add language about making name of contact available to public?? Need to mention that the contact person is not solely responsible for fulfilling request or that request has to be made to POA??]*

**2. Training.** A public access officer shall complete a course of training on the requirements of this chapter relating to public records and proceedings as described in section 412.

**Sec. 10. Appropriations and allocations.** The following appropriations and allocations are made. *(Assumes April 1, 2012 effective date.)*

**ATTORNEY GENERAL, DEPARTMENT OF THE**

**Administration – Attorney General 0310**

Initiative: Provides funds for one Assistant Attorney General position to serve as a Public Access Ombudsman.

<b>GENERAL FUND</b>	<b>2011-12</b>	<b>2012-13</b>
Position – Legislative Count	1.000	1.000
Personal Services	\$18,160	\$75,420
All Other	\$5,178	\$3,178
<b>GENERAL FUND TOTAL</b>	<b>\$23,338</b>	<b>\$78,598</b>





## Public Records Exceptions Subcommittee final recommendations

### Existing Public Records Exceptions, Titles 22 - 25

Exceptions for review and discussion on December 8, 2011

Revised 12/8/2011 12:22 PM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
18	22	1696-D		Title 22, section 1696-D, relating to the identity of chemical substances in use or present at a specific location if the substance is a trade secret	DHHS	<ul style="list-style-type: none"> <li>No record of any experience</li> <li>No changes</li> </ul>	12/08/11: No change with letter to ENR and HHS (4-0)	
19	22	1696-F		Title 22, section 1696-F, relating to the identity of a specific toxic or hazardous substance if the substance is a trade secret	DHHS	<ul style="list-style-type: none"> <li>No record of any experience</li> <li>No changes</li> </ul>	12/08/11: No change with letter to ENR and HHS (4-0)	
54	22	8754		Title 22, section 8754, relating to medical sentinel events and reporting	MHDO DHHS	<ul style="list-style-type: none"> <li>No requests known</li> <li>Amend: "incidents reports and similar documents"</li> </ul>	12/08/11: No change but recommend further review of release of sentinel event info (4-0)	
57	23	63		Title 23, section 63, relating to records of the right-of-way divisions of the Department of Transportation and the Maine Turnpike Authority	MTA & DOT	<ul style="list-style-type: none"> <li>Covers two categories of records</li> <li>Invoked rarely</li> <li>Subject of two Law Court cases, one LD (not enacted)</li> <li>No changes</li> </ul>	12/08/11: Amend (4-0) <i>see draft</i>	

**Public Records Exceptions Subcommittee final recommendations**

**Existing Public Records Exceptions, Titles 22 - 25**

Exceptions for review and discussion on December 8, 2011

Revised 12/8/2011 12:22 PM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
62	23	8115		Title 23, section 8115, relating to the Northern New England Passenger Rail Authority	NNEPRA	<ul style="list-style-type: none"> <li>• Has not received any requests</li> <li>• Four types of records                             <ul style="list-style-type: none"> <li>• Trade secrets</li> <li>• Records and correspondence relating to negotiations</li> <li>• Estimates of cost on projects put out to bid</li> <li>• Employment applications</li> </ul> </li> <li>• No changes</li> </ul>	12/08/11: Amend (4-0) <i>see draft</i>	11/17: Tabled

## Public Records Exceptions Subcommittee final recommendations

### Existing Public Records Exceptions, Titles 22 - 25

Exceptions for review and discussion on December 8, 2011

Revised 12/8/2011 12:22 PM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
66	24	2510	1	Title 24, section 2510, subsection 1, relating to professional competence reports under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: ▶ cited 2-3 times per year ▶ PROPOSED: clarify confidentiality applies to all patient complaints MeHospAssn: ▶ MHA does not administer ▶ Not aware of requests ▶ No changes BdofDentalEx: ▶ No requests ▶ n/a MeMedAssn: ▶ MMA does not administer ▶ Don't know how frequent ▶ No changes	12/08/11: Amend (4-0) <i>see draft</i>	

## Public Records Exceptions Subcommittee final recommendations

### Existing Public Records Exceptions, Titles 22 - 25

Exceptions for review and discussion on December 8, 2011

Revised 12/8/2011 12:22 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATION	ADVISORY COMMITTEE ACTION ON RECOMMENDATION
67	24	2510-A	Title 24, section 2510-A, relating to professional competence review records under the Maine Health Security Act	BOI (Board of Licensure in Medicine, the Board of Dental Examiners or the Board of Osteopathic Licensure)	BOI has no role BdLicMed: <ul style="list-style-type: none"> <li>▸ Cited 2-3 times per year</li> <li>▸ PROPOSED: allow Bd to access peer review reports</li> </ul> MeHospAssn: <ul style="list-style-type: none"> <li>▸ Not aware of requests</li> <li>▸ No changes</li> </ul> BdofDentalEx: <ul style="list-style-type: none"> <li>▸ No requests</li> <li>▸ n/a</li> </ul> MeMedAssn: <ul style="list-style-type: none"> <li>▸ substantial experience</li> <li>▸ not held by public entities so not subject to FOA</li> <li>▸ no changes</li> </ul>	12/08/11: No change (4-0)	

G:\STUDIES 2011\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Chart of unfinished exceptions for 12-8-11.doc (12/8/2011 12:23:00 PM)

## **FAQ suggested updates 12-8-11**

### **GENERAL QUESTIONS**

#### **What is the Freedom of Access Act?**

The Freedom of Access Act ("FOAA") is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

#### **Are federal agencies covered by the Freedom of Access Act?**

No. The Freedom of Access Act does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: <http://www.usdoj.gov/oip/foiastat.htm> or you can find more general information on the Freedom of Information Act at: [http://answers.usa.gov/cgi-bin/gsaict.cfg/php/enduser/stdadp.php?p\\_faqid=5940](http://answers.usa.gov/cgi-bin/gsaict.cfg/php/enduser/stdadp.php?p_faqid=5940)

#### **Who enforces the Freedom of Access Act?**

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the Freedom of Access Act. 1 M.R.S.A. § 409 (1). Superior Courts Directory: [http://www.courts.state.me.us/maine\\_courts/superior/directory.shtml](http://www.courts.state.me.us/maine_courts/superior/directory.shtml)

<p><u>Relief can be in the form of an injunction issued by the court that directs the government body, agency or official to comply with the law, such as by providing access to a public proceeding or by making public records available for inspection or copying.</u></p>
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In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. 1 M.R.S.A. § 410.

#### **What are the penalties for failure to comply with the Freedom of Access laws?**

A state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. 1 M.R.S.A. § 410. Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. 1 M.R.S.A. § 452.

## **FAQ suggested updates 12-8-11**

### **Are elected officials required to take training on the Freedom of Access laws?**

Yes. Beginning July 1, 2008, elected officials must complete a course of training on the requirements of the Freedom of Access laws.

### **Which elected officials are required to take Freedom of Access training?**

Elected officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators elected after November 1, 2008
- Commissioners, treasurers, district attorneys, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school units and school boards
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts.

### **What does the training include?**

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all of this information but may include additional information.



## **FAQ suggested updates 12-8-11**

### **Do training courses need to be certified by the Right to Know Advisory Committee?**

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

### **How do elected officials certify they have completed the training?**

After completing the training, elected officials are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A [sample training completion form is available](#) (This file requires the free [Adobe Reader](#)).

## **PUBLIC RECORDS**

### **What is a public record?**

The Freedom of Access Act defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below) [1 M.R.S.A. § 402 \(3\)](#).

### **Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?**

No. The Freedom of Access Act provides that "every person" has the right to inspect and copy public records. [1 M.R.S.A. § 408 \(1\)](#).

### **How do I make a Freedom of Access Act request for a public record?**

See the [How to Make a Request page on this site](#).

### **Is there a form that must be used to make a Freedom of Access Act request?**

No. There are no required forms.

### **Does my Freedom of Access Act request have to be in writing?**

No. The Freedom of Access Act does not require that requests for public records be in writing. However, most bodies and agencies ask individuals to

## **FAQ suggested updates 12-8-11**

submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

### **What should I say in my request?**

In order for the body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for “all records on landfills” is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for “all records identifying landfills within 20 miles of 147 Main Street in Augusta” is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies “all active landfills in Augusta” or “all active landfills in Kennebec County.” It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

### **Does an agency have to acknowledge receipt of my request?**

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 MRSA § 408 (1).

### **Can an agency ask me for clarification concerning my request?**

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 MRSA §408 (1).

### **When does the agency or official have to make the records available?**

The records must be made available “within a reasonable period of time” after the request was made. 1 M.R.S.A. § 408 (1). The agency or official can schedule the time for your inspection, translation and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency or official. 1 M.R.S.A. §§ 408 (1) & (2).



## **FAQ suggested updates 12-8-11**

### **Does an agency have to produce records within 5 days of my request?**

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 MRSA § 408 (1). Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 MRSA § 409 (1).

### **Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?**

The Freedom of Access Act only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you. The agency may charge a reasonable fee to cover the cost of making the copies for you. 1 M.R.S.A. § 408 (1) & (3)(A).

### **When may a governmental body refuse to release the records I request?**

The Freedom of Access Act provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the Freedom of Access Act.

### **What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?**

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the Freedom of Access Act. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

### **Does an agency have to explain why it denies access to a public record?**

## **FAQ suggested updates 12-8-11**

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

### **What can I do if I believe an agency has unlawfully withheld a public record?**

If you are unsatisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: [http://www.courts.state.me.us/maine\\_courts/superior/directory.shtml](http://www.courts.state.me.us/maine_courts/superior/directory.shtml)

### **May a governmental body ask me why I want a certain record?**

The Freedom of Access Act does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408 (1).

### **Can I ask that public reports or other documents be created, summarized or put in a particular format for me?**

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request.

Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

### **I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?**

No. A public officer or agency is not required under the Freedom of Access Act to explain or answer questions about public records. The Act only requires officials and agencies to make public records available for inspection and copying.

### **What records must a public officer or agency keep, and how long do they have to keep them?**

The Generally, the Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and

## **FAQ suggested updates 12-8-11**

agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule. 5 MRSA § 92-A (5) (This file requires the free [Adobe Reader](#)).

However, the Freedom of Access law does require that a public body keep a summary of its public proceedings. The summary must include: the date, time and place of the proceeding; the members of the public body, recorded as either present or absent; and all motions and votes taken, by individual member if the vote is by roll call. The summary can be in any medium, including audio, video and electronic. This requirement does not apply to advisory bodies that make recommendations but have no decision-making authority. 1 MRSA §403 (2)

How long records must be kept depends on the type of record and the value of the record's content. The [Maine State Archives](#) works with state and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention.

### **Are an agency's or official's e-mails public records?**

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

### **Can an agency charge for public records?**

There is no initial fee for submitting a Freedom of Access Act request and agencies cannot charge an individual to inspect records. 1 M.R.S.A. § 408 (3)(D). However, agencies can and normally do charge for copying records. Although the Freedom of Access Act does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408 (3)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The Act authorizes agencies or officials to charge \$10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408 (3)(B). Where translation of a record is necessary, the agency or official may also charge a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

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The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than \$20, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds \$100 or if the requester has previously failed to pay a fee properly assessed under the Freedom of Access Act. 1 M.R.S.A. § 408 (4) & (5).

### **I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?**

The agency or official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if release of the public record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408 (6)

### **Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?**

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

## **PUBLIC PROCEEDINGS**

### **What is a public proceeding?**

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402.

### **What does the law require with regard to public proceedings?**

The Freedom of Access Act requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

## **FAQ suggested updates 12-8-11**

### **When does a meeting or gathering of members of a public body or agency require public notice?**

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

### **What kind of notice of public proceedings does the Freedom of Access Act require?**

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

### **Can a public body or agency hold an emergency meeting?**

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 MRSA § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 MRSA § 403.

### **Can public bodies or agencies hold a closed meeting?**

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

### **Can the body or agency conduct all of its business during an executive session?**

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the Freedom of Access Act, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to the Freedom of Access Act is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

### **What if I believe a public body or agency conducted improper business during an executive session?**

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally,

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the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory: [http://www.courts.state.me.us/maine\\_courts/superior/directory.shtml](http://www.courts.state.me.us/maine_courts/superior/directory.shtml)

### **Can members of a body communicate with one another by email outside of a public proceeding?**

~~There is no legal prohibition against email communication between members of a public body outside of a public proceeding.~~

The law does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of the Freedom of Access law. 1 MRSA § 401.

~~However, email~~ Email or other communication among a quorum of the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 MRSA § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.

### **Can I record a public proceeding?**

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Yes. The Freedom of Access Act allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the Act. 1 M.R.S.A. § 404.

### **Do members of the public have a right to speak at public meetings under the Freedom of Access Act?**

The Freedom of Access Act does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

### **Is the public body or agency required to keep running minutes or a record of a public proceeding?**

There is no requirement under the Freedom of Access Act that a public body or agency keep running minutes during all public proceedings. The Act does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

### **Is the agency or body required to make the record or minutes of a public proceeding available to the public?**

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).

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